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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

Nos. 30 and 31.

IDAHO SHEET METAL WORKS, INC., Petitioner, 30 vs. W. WILLARD WIRTZ, Secretary of Labor.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
W. WILLARD WIRTZ, Secretary of Labor, Petitioner, 31 vs. STEEPLETON GENERAL TIRE COMPANY, INC., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

PETITION TO REHEAR.

LUCIUS E. BURCH, JR.,
128 North Court Avenue,
Memphis, Tennessee 38103,
Attorney for Respondent.

BURCH, PORTER & JOHNSON,
128 North Court Avenue,
Memphis, Tennessee,

FARRIS, HANCOCK & MITCHELL,
1620 First National Bank Building,
Memphis, Tennessee,
Of Counsel.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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PETITION TO REHEAR.

On behalf of respondent, Steepleton General Tire Company, Inc., we petition the Court to grant a rehearing of this cause. With respect we assert that the Court, in reversing the opinions of the district judge and the Court of Appeals of the Sixth Circuit, has overlooked two cardinal legal propositions.

First, the Court has gone beyond the face of statutory language and deduced a meaning from legislative history.

We believe the Court should not concern itself with exploring the labyrinth of legislative history unless it cannot gain the meaning of a statute from merely reading the language. Here the only language to be interpreted is whether or not sales of the type under consideration are "recognized as retail sales or services in the particular industry." It is difficult to imagine words of the English language of clearer meaning and in simpler arrangement. Yet, the Court, without finding the slightest ambiguity or inconsistency and, without saying how or why, disposes of the statutory language in less than a full sentence: "After rejecting the industry's usage as controlling, we face the further difficult question of what criteria do determine when business transactions are retail under the act." Unless there is some deficiency in the language, the Court is not free to distill its own conclusions from the opposing views of the partisans in the legislative debates. This is the first great error of the opinion and results from the failure of the Court to notice cases which clearly state this rule and which have not been called to the attention of the Court heretofore.

An apt and succinct statement of the rule is in **Ex Parte Collett**, 337 U. S. 55, 93 L. Ed. 1207, at p. 61:

> "**Third.** Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of § 1404 (a), but from its legislative history. The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' Gemsco, Inc. v. Walling, 324 U. S. 244, 260, 89 L. ed. 921, 933, 65 S. Ct. 605 (1945). This canon of construction has received consistent adherence in our decisions."

See also **U. S. v. Public Utilities Commission,** 345 U. S. 295, 97 L. Ed. 1020; **U. S. v. Oregon,** 366 U. S. 643, 6 L. Ed. 2d 575.

The Court well stated both the rule and the reason for it in the earlier case of **Railroad Commission v. Railroad,** 257 U. S. 561, 66 L. Ed. 371, when Mr. Chief Justice Taft, speaking for a unanimous Court, said:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge, made in presenting a bill for passage, have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. Duplex Printing Press Co. v. Deering, 254 U. S. 443, 475, 65 L. ed. 354, 16 A. L. R. 196, 41 Sup. Ct. Rep. 172. But when, taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. Pennsylvania R. Co. v. International Coal Min. Co., 230 U. S. 184, 198, 57 L. ed. 1446, 1451, 33 Sup. Ct. Rep. 893, Ann. Cas. 1915A, 315; Caminetti v. United States, 242 U. S. 470, 490, 61 L. ed. 442, 455, L. R. A. 1917F, 502, 37 Sup. Ct. Rep. 192, Ann. Cas. 1917B, 1168. Such aids are only admissible to solve doubt, and not to create it."

It has **never** been suggested that the phrase "recognized as retail sales or services in the particular industry" is ambiguous or unclear. It is the classification that was used in the NRA Code by the Regulations of the Office of Price Administration, by the tire industry, by state taxing authorities, and clearer words in simpler arrangement would be difficult to find.

The Court erred when, without prior insistence and prior finding of ambiguity, it vaulted over the clear language of the statute into the murky world of partisan discord from whence emerged the statute.

The second error is less fundamental but it seems greatly to have colored the judgment of the Court. It is apparently the feeling of the Court that it has before it de novo the question of how the sales were "recognized" in the particular industry. The Court weighs the evidence —"The only explanation offered for this use was that it conformed to many sales tax statutes. The Secretary showed that the industry sometimes used the word retail in other senses that excluded commercial sales and that commercial customers of Steepleton did not regard their purchases as retail transactions." The finding of the Court that "The only explanation . . . was that it conformed to many sales tax statutes" is clearly erroneous, for the record reflects that no other definition is sanctioned by history, definition, custom, or reason. 117 (a), 288 (a), 397 (a), 400 (a), 401 (a), 403 (a), 414 (a), 429 (a), 434 (a), 435 (a), 459 (a), 467 (a), 468 (a), 483 (a), 487 (a), 497 (a), 498 (a), 568 (a), 569 (a), 570 (a), 576 (a), 611 (a), 625 (a), 641 (a), 656(a)-657 (a), 688 (a), 689 (a), 845 (a), 885 (a), 863 (a).

However, the conclusion of both inferior courts that the sales in question were of a type "recognized as retail sales or services in the particular industry" is not an open question in this Court. Just as the Court should be stayed from attempting to construct a meaning of the statute from its history rather than from its clear language, so a reweighing of the evidence as to the nature of the sales is denied the Court by the language of **Rule 52 (a)**, Federal Rules of Civil Procedure. **U. S. v. Gypsum Co.**, 333 U. S. 364; **Commissioner v. Duberstein**, 363 U. S. 278; **Grover Tank & Mfg. Co. v. Linde Air Products Co.**, 339 U. S. 605.

The rules of the Court do not permit us to argue whether the opinion is or is not supported by the legislative history or whether or not it is logical, sound, or squares with common sense. Even in the absence of Rule 58, we could make no such argument, for our license to audience before the Court was not obtained by any showing of superior learning in natural reason, logic, or common sense. Our right to the ear of the Court rests alone upon asserted knowledge of "the artificial reasoning of the law." One of history's most momentous conversations was the famous Sunday colloquy between Lord Coke and the King, which has shaped our system of justice. It occurred when the Arch-Bishop of Canterbury expounded the royal prerogative. He argued that since judges were but delegates of the King, the King might at any time do personally what he ordinarily did by delegates and himself try cases.

Coke answered in behalf of the judges that by the law of England the King in person could not adjudge any cause. All causes, civil and criminal, were to be determined in some court of justice and according to the law and custom of the realm. "But," said the King, "I thought law was founded upon reason, and I and others have reason as well as judges." "True it is," said Coke, "that God hath endowed His Majesty with excellent science and great endowments of nature; but His Majesty is not learned in the laws of his realm of England, and causes which concern the life or inheritance or goods or fortunes of his subjects are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an art which requires long study and experience before that a man can attain to the cognizance of it."

However, full of "natural reason" as is the Court's opinion, based upon the conclusions which it has drawn

from the legislative history of the statute, we respectfully assert that the Court disregarded the "artificial reasoning of the law" which does not sanction the seeking of meaning of statutes from sources other than the language of such statute until ambiguity or conflict of language have made construction impossible and, also, in weighing facts which are closed to assay because of rule 52 (a).

We respectfully petition the Court to amend its opinion and affirm in case No. 31 **(Wirtz v. Steepleton General Tire Company, Inc.)**, or, in the alternative, set the case for re-hearing so that we may have an opportunity to amplify these points and, at the same time, receive our first opportunity to demonstrate to the Court that there is virtually no similarity between cases Nos. 30 and 31.

Respectfully submitted,

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LUCIUS E. BURCH, JR.,
128 N. Court Avenue,
Memphis, Tennessee 38103,
Attorney for Respondent.

BURCH, PORTER & JOHNSON,
128 N. Court Avenue,
Memphis, Tennessee,
FARRIS, HANCOCK & MITCHELL,
1620 First National Bank Building,
Memphis, Tennessee,
Of Counsel.

The foregoing petition for rehearing is presented in good faith and not for delay. Five copies of the petition have been served upon the Honorable Thurgood Marshall, Solicitor General, Department of Justice, Washington,

D. C. 20530, and upon Honorable Charles Donahue, Solicitor, Department of Labor, Washington, D. C. 20210, by placing said copies, duly addressed and with postage prepaid, in the United States mail, this the ... day of March, 1966.

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Lucius E. Burch, Jr.